

Exhibit A

**To Capital Funding, LLC's Omnibus
Supplemental Brief Regarding
Dismissal of Zisha Lipschutz
Filed October 31, 2019**

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK - CIVIL TERM - PART 61

3 -----X

4 AP MA FUNDING, LLC,

5 Plaintiff,

6 -against-

7 AVI "ZISHA" LIPSCHUTZ and LARRY LIPSCHUTZ,

8 Defendants.

9 -----X

10 Index # 651570/2018

11 Proceedings

12 60 Centre Street

13 New York, New York

14 September 26, 2019

15 B E F O R E:

16 HONORABLE BARRY R. OSTRAGER,
17 Justice.

18 A P P E A R A N C E S:

19 BLANK & ROME, LLP

20 405 Lexington Avenue

21 New York, New York 10174-0208

22 BY: PAIGE BARR TINKHAM, ESQ.

23 WILLIAM DORSEY, ESQ.

24 Attorneys for Plaintiff

25 LAW OFFICE OF ALAN J. GARFUNKEL, LLC

444 Madison Avenue

New York, New York 10022

BY: ALAN J. GARFUNKEL, ESQ.

DENA INGERMAN, ESQ.

Attorney for Defendant - Larry Lipschutz

DEBORAH A. ROTHROCK, RPR

Official Court Reporter

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-Redirect/Mr Moore/by Ms. Tinkham-

1 THE COURT: It is not in evidence. It is not in
2 evidence.

3 MS. TINKHAM: Your Honor, at least the signature
4 page is admitted into evidence? Larry admitted signing,
5 your Honor--

6 THE COURT: Look, it is undisputed that Mr.
7 Lipschutz signed the signatures pages that are attached to
8 the Guaranty and he claims that that is the only thing he
9 saw. And as you observed in your opening, it's not relevant
10 because Mr. Lipschutz reaffirmed his Guaranty in the one and
11 only subsequent agreement between the parties.

12 MS. TINKHAM: Understood. We just want the
13 signatures page admitted into evidence, we just want to
14 clarify.

15 THE COURT: Exhibit 2 is not received in evidence
16 for the fourth time.

17 MS. TINKHAM: Thank you, your Honor.

18 THE COURT: All right. I'm ready to rule.

19 The Plaintiffs have established that Mr. Lipschutz
20 loaned \$6 million to a holding company which owned Braemoor
21 Health Center.

22 The evidence established that the loan was
23 refinanced by the Plaintiff AP MA Funding and Mr. Lipschutz
24 received back the \$6 million that he had invested in the 34
25 North Pearl Street. In connection with that transaction Mr.

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1 Lipschutz was intending to Guaranty \$2 million towards the
2 repayment of the money that was refinanced and subsequently
3 there was a modification agreement which its undisputed Mr.
4 Lipschutz signed, and presumably understood, and it was
5 co-signed by AP MA and other parties and that modification
6 agreement which is in evidence, we have, reaffirmed Mr.
7 Lipschutz's obligation under the Guaranty. And the
8 modification agreement reduced Mr. Lipschutz's Guaranty from
9 \$2 million to \$750,000.

10 If Mr. Lipschutz didn't understand that the
11 Guaranty \$2 million when he signed the modification
12 agreement, he understood that he was reaffirming whatever
13 Guaranty he had executed the signature page to.

14 So Mr. Lipschutz had a \$750,000 Guaranty. There
15 was subsequent negotiations to modify that Guaranty and by
16 the payment of \$600,000 to 34 North Pearl Street, of which
17 \$320,000 was to be paid to AP MA. It is undisputed that the
18 \$320,000 was never paid to AP MA. It is undisputed that the
19 only modification agreement that was inexistence was never
20 amended by a written agreement. It is undisputed that and
21 stipulated that Mr. Lipschutz did wire \$600,000 to Braemoor
22 Health Center, which was, in essence, wiring money to
23 himself because it didn't go to 34 North Pearl and no
24 portion went to AP MA, which was what was discussed in
25 connection with the second modification agreement.

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1 So Mr. Lipschutz is liable on his Guaranty for
2 \$750,000. The Guaranty was reaffirmed by the modification
3 agreement. So AP MA is entitled to recover its reasonable
4 attorney's fees in connection with the prosecution of this
5 action and the reasonable attorney's fees are a simple
6 complaint on the Guaranty; is some number significantly
7 below \$100,000. But we've had a trial here, so I'm going to
8 award AP MA Funding \$75,000 in attorney's fees. And that is
9 the disposition of the case.

10 You'll order a copy of the transcript. You'll file
11 all your exhibits under the E-filing System.

12 And I've awarded judgment in favor of the Plaintiff
13 in the sum of \$825,000 against Larry Lipschutz.

14 The Plaintiff is entitled to statutory prejudgment
15 interest as of the date of the breach. There's no evidence
16 of when demand was made for payment under the Guaranty,
17 other than the complaint in this action, so the prejudgment
18 interest would run from the date of the filing of the
19 complaint in this action.

20 Counsel will order the transcript, bring it to the
21 part to be so ordered and prepare a judgment consistent with
22 the decision and submit everything to the judgment Clerk in
23 the County Clerk's Office, which is Room 141B with proof of
24 service on opposing counsel. The Judgment Clerk there will
25 assist counsel in complete the process for the entry of

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judgment.

Have a nice day.

MR. DORSEY: Thank you.

MR. GARFUNKEL: Thank you.

(Whereupon, the proceedings concluded.)

* * *

It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.

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Official Court Reporter

SO ORDERED

BARRY R. OSTRAGER, J.S.C.

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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2019, a true and correct copy of Exhibit A to Capital Funding's Omnibus Supplemental Brief Regarding Dismissal of Zisha Lipschutz Filed October 31, 2019 was served by electronic filing on all counsel of record.

/s/ Paige B. Tinkham